

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/12-01/18

Date 28 September 2026

THE APPEALS CHAMBER

Before: Judge Luz del Carmen Ibáñez Carranza, Presiding Judge
 Judge Tomoko Akane
 Judge Solomy Balungi Bossa
 Judge Gocha Lordkipanidze
 Judge Erdenebalsuren Damdin

SITUATION IN MALI

***IN THE CASE OF THE PROSECUTOR v. AL HASSAN AG ABDOUL AZIZ AG
 MOHAMED AG MAHMOUD***

Public

**OPCV Consolidated Response
 to the Defence and LRVs Appeal Briefs against the Reparations Order**

Source: Office of Public Counsel for Victims

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I. INTRODUCTION

1. Counsel from the Office of Public Counsel for Victims (the “OPCV” or the “Office”), representing four victims in the proceedings,¹ respond to the Defence² and the Legal Representatives of Victims’ (the “LRVs”)³ Appeal Briefs against the Reparations Order (the “Impugned Decision”) issued on 28 April 2026 by Trial Chamber X (the “Chamber”) in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*.⁴

2. Counsel posit that, in its Appeal Brief, the Defence failed to demonstrate that the Chamber committed any error that would warrant the intervention of the Appeals Chamber.

3. Concerning the first ground, the Defence failed to establish that the Chamber erred in treating the Trial Judgment, rather than the dissenting opinion of Judge Akane, as the “controlling text”. In any event, it also failed to demonstrate that reliance on the dissenting opinion would have led to alternative conclusions resulting in a different calculation of Mr Al Hassan’s amount of liability.

4. Concerning the second ground, contrary to the Defence’s contention, the Chamber properly assessed Mr Al Hassan’s participation and contribution to the crime of persecution when determining the harms suffered and the corresponding reparations award. In any event, the Defence also failed to demonstrate how a different assessment of Mr Al Hassan’s participation would have resulted in a different

¹ See the “Decision on the LRV’s submission on a potential conflict of interest” (Trial Chamber X), [No. ICC-01/12-01/18-2728-Conf](#), 5 June 2025. A public redacted version [No. ICC-01/12-01/18-2728-Red](#), was filed the same day (the “Decision of 5 June 2025”).

² See the “Defence Appeal Brief against the Reparations Order (ICC-01/12-01/18-2782), [No. ICC-01/12-01/18-2797Conf A A3](#), with two public annexes, 28 July 2026. A public redacted version No. [ICC-01/12-01/18-2797-Red A A3](#) was filed on 19 August 2026 (the “Defence Appeal Brief”).

³ See the “*Mémoire d’appel des Représentants légaux des victimes contre l’Ordonnance de réparations rendue par la Chambre de première instance X (ICC-01/12-01/18-2782)*”, [No. ICC-01/12-01/18-2895](#) A A4, 28 July 2026 (the “LRVs Appeal Brief”).

⁴ See the “Reparations Order” (Trial Chamber X), [No. ICC-01/12-01/15-2872](#), 28 April 2026 (the “Impugned Decision”).

calculation of the convicted person's amount of liability, particularly given its contention that the community of Timbuktu should have been considered as a victim of the crime.

5. Concerning the third ground, contrary to the Defence's contention, the Chamber adequately justified its findings regarding the number of inhabitants of Timbuktu. Accordingly, the Defence failed to demonstrate that the Chamber's application of a presumption of victimhood to the residents of Timbuktu was unreasonable.

6. Lastly, Counsel support in full grounds 1 and 2 raised by the LRVs as they are largely identical to the grounds raised in their Appeal Brief. Counsel also largely concur with the third ground raised by the LRVs, namely that the Chamber erred in setting a liability amount that is insufficient to adequately reflect Mr Al Hassan's liability.⁵ While Counsel defer to the Appeals Chamber to determine whether any aspect of the Impugned Decision should be reversed and/or remanded, they wish to underline that they broadly share the concerns expressed by the LRVs regarding the methodology adopted by the Chamber for assessing certain costs of reparations, which may have resulted in an underestimation of the overall amount of liability.⁶

II. LEVEL OF CONFIDENTIALITY

7. While the Defence has filed its Appeal Brief as confidential, the present submission is filed publicly because it does not contain any confidential information.

⁵ See the LRVs Appeal Brief, *supra* note 3, in particular paras. 108, 115-116, 123-124 and 130.

⁶ *Ibid.*, paras. 100-131, in particular paras. 106-124.

III. PROCEDURAL HISTORY

8. On 28 April 2026, the Chamber issued the Impugned Decision.⁷

9. On 28 May 2026, Mr Al Hassan filed its Notice of Appeal Against the Impugned Decision.⁸

10. On 29 May 2026, the OPCV⁹ and the LRVs¹⁰ filed their respective Notices of Appeal against the Impugned Decision.

11. On 2 June 2026, the Appeals Chamber issued the Decision on the Presiding Judge in the appeal.¹¹

12. On 28 July 2026, the OPCV,¹² the LRVs¹³ and the Defence¹⁴ filed their respective Appeals Briefs.

IV. RESPONSE TO THE DEFENCE APPEAL BRIEF

13. All three Defence grounds of appeal are, in essence, iterations of the same alleged error: the purported impermissible expansion of the scope of the crime of persecution and its alleged effect on the extent of the convicted person's liability for reparations. None of the Defence's arguments, however, convincingly establishes an error warranting the intervention of the Appeals Chamber. Indeed, even assuming

⁷ See the Impugned Decision, *supra* note 4.

⁸ See the "Defence Notice of Appeal Against the Reparations Order (ICC-01/12-01/18-2782)", [No. ICC-01/12-01/18-2784 A A3](#), 28 May 2026.

⁹ See the "OPCV Notice of Appeal against the Reparations Order", [No. ICC-01/12-01/18-2786 A A5](#), 28 May 2026.

¹⁰ See the "Acte d'appel des Représentants légaux des victimes de l'Ordonnance de réparations rendue par la Chambre de première instance X (ICC-01/12-01/18-2782)", 29 May 2026, [No. ICC-01/12-01/18-2785 A A4](#).

¹¹ See the "Decision on the Presiding Judge of the Appeals Chamber", [No. ICC-01/12-01/18 A3 A4 A5](#), 2 June 2026.

¹² See the "OPCV Appeal Brief against the Reparations Order", [No. ICC-01/12-01/18-2796 A A5](#), 28 July 2026 (the "OPCV Appeal Brief").

¹³ See the LRVs Appeal Brief, *supra* note 3.

¹⁴ See the Defence Appeal Brief, *supra* note 2.

arguendo that the Appeals Chamber were to find some of the Chamber's challenged findings erroneous, none of those alleged errors, with the exception of the one concerning the estimated number of inhabitants of Timbuktu (the third prong of the third ground of appeal), would materially affect the Impugned Decision. Nor would any of those errors lead to a different conclusion regarding Mr Al Hassan's financial liability.

1. The Defence first Ground of Appeal

14. The Defence alleges that the Impugned Decision impermissibly expanded the scope of the conviction. In particular, it contends that the Chamber erred in relying on the Trial Judgment itself, rather than on the dissenting opinion of Judge Akane – which the Defence characterises as the “*controlling text*” for determining the scope of the crime of persecution.¹⁵ On that basis, the Defence argues that: (i) Judge Akane's view that only the conduct underlying Counts 1-5 and 14 fell within the scope of the crime of persecution should have prevailed for the purpose of reparations;¹⁶ (ii) Judge Akane's factual findings concerning the impact of the persecutory policy, namely the rules and prohibitions imposed by Ansar Dine/AQIM, should likewise have prevailed;¹⁷ (iii) conduct which Judge Akane considered to fall outside the scope of Mr Al Hassan's conviction should have been excluded from the scope of persecution for the purpose of the Impugned Decision;¹⁸ (iv) the Chamber consequently erred in awarding reparations to “*similarly situated*” victims of persecution;¹⁹ and (vi) these alleged errors resulted in a significant increase in Mr Al Hassan's financial liability.²⁰

15. This ground of appeal rests entirely on the Defence's contention that Judge Akane's dissenting opinion, rather than the Trial Judgment, constitutes the “*controlling*

¹⁵ See the Defence Appeal Brief, *supra* note 2, paras. 30-41.

¹⁶ *Ibid.*, paras. 42-48.

¹⁷ *Ibid.*, paras. 49-61.

¹⁸ *Ibid.*, paras. 62-71.

¹⁹ *Ibid.*, paras. 72-76.

²⁰ *Ibid.*, paras. 77-80.

text” for determining the scope of the crime of persecution for the purpose of reparations. That contention is unsustainable.

16. First, the Defence already raised the issue during the reparations proceedings and made extensive submissions thereon.²¹ In the Impugned Decision, the Chamber expressly considered those submissions and provided a reasoned response to them.²² However, in its Appeal Brief, the Defence largely reiterates the same arguments without demonstrating any error in the Chamber’s analysis or identifying any material flaw in its reasoning. In doing so, the Defence merely expresses disagreement with the conclusions reached in the Impugned Decision. Such disagreement, without more, is insufficient to establish an appealable error.

17. Second, the Defence’s contention that Judge Akane’s dissenting opinion constitutes the “*controlling text*”, rests on a novel proposition that finds no support in the Court’s legal framework or jurisprudence. The authoritative determination of the scope of the crime of persecution is contained in the Trial Judgment itself, which was adopted by a majority of the Chamber. In issuing that Judgment, the Judges deliberately determined which findings formed part of the Chamber’s decision. To the extent that any judge disagrees with the Majority’s reasoning or conclusions, such disagreement was recorded in a separate or dissenting opinion. The fact remains that the scope of the crime of persecution was determined in the Judgment by a majority of the Chamber. The Defence discontinued its appeal of the Judgment, which is now final. Accordingly, to the extent that the Defence seeks, through the present appeal, to challenge findings underpinning the conviction itself, such arguments fall outside the scope of these proceedings and cannot be revisited at the reparations stage.

18. Third, and by the same token, the Defence’s argument misconceives the function of a dissenting opinion. The existence of a dissenting opinion merely reflects

²¹ See the “Defence Observations on Reparations”, [No. ICC-01/12-01/18-2729](#), 11 June 2026, paras. 8-17.

²² See the Impugned Decision, *supra* note 4, paras. 56-62, in particular para. 57.

a difference of reasoning or conclusion between members of a chamber. A separate or dissenting opinion does not constitute the decision of the Chamber and has no independent authoritative status. Rather, the Chamber's binding determination is the decision adopted by the majority of its members. Accordingly, the mere existence of Judge Akane's dissenting opinion cannot support the Defence's contention that it should prevail over the Trial Judgment as the operative basis for determining the scope of the crime of persecution.

19. Fourth and most importantly, in the Sentencing Decision—which was similarly not appealed by the Defence and is now final—the Chamber recalled at length the contours of the crime of persecution as determined in the Trial Judgment. Judge Akane was herself a member of that chamber and did not express any disagreement with those findings. This was not a mere omission, as she expressly recorded her disagreement with other aspects of the Sentencing Decision.²³ Accordingly, the Sentencing Decision confirms that the Chamber continued to rely on the Judgment's articulation of the crime of persecution and provides no basis for treating Judge Akane's dissenting opinion as the “*controlling text*” for the purposes of these proceedings.

20. In any case, even assuming *arguendo* that the Defence's submissions have merit, they do not undermine the findings challenged on appeal.

21. Indeed, first, the distinct nature of reparations proceedings does not preclude a trial chamber from making findings that are specific to the determination of reparations, particularly given the applicable standards of causation and proof. Thus, even assuming *arguendo* that the Defence's interpretation of the conviction were correct, it would not automatically follow that only the victims identified under Counts 1-5 and 14 could benefit from reparations. On the balance of probabilities, the

²³ See the “Sentencing Decision” (Trial Chamber X), [No. ICC-01/12-01/18-2662](#), 20 November 2024, para. 233 (the “Sentencing Decision”).

Chamber was entitled to assess whether other victims had suffered harm causally connected to the crime of persecution for which Mr Al Hassan was convicted.

22. Second, the Defence overlooks that the Chamber expressly addressed the significance of Judge Akane's position on the scope of the crime of religious persecution in the Impugned Decision. Indeed, it stated that

"[...] the citation of these paragraphs in the Sentencing Decision, issued unanimously by a Chamber whose composition included Judge Akane, demonstrates Judge Akane's agreement to these findings on the scope of the crime of persecution on religious grounds".²⁴

23. Finally, the Defence's position appears internally inconsistent. On the one hand, it argues that only a limited category of victims, namely those affected by the crimes charged under Counts 1-5 and 14, should also be recognised as victims of persecution, and that the amount of liability should therefore be substantially reduced. On the other hand, in the alternative, it proposes that the community of Timbuktu be recognised as a victim of persecution. That alternative position necessarily entails a much broader scope of victimisation than that encompassed by the victims of Counts 1-5 and 14 alone. Consequently, if the community of Timbuktu is recognised as a victim of persecution, the amount of liability cannot logically be confined to addressing only the harms suffered by the individual victims of those specific counts.

24. In conclusion, under its first Ground of Appeal, the Defence has failed to demonstrate either that the Chamber committed any error or that its proposed alternative approaches would have resulted in a different calculation of the amount of liability. Accordingly, this Ground of Appeal should be rejected.

²⁴ See the Impugned Decision, *supra* note 4, para. 57.

2. The Defence second Ground of Appeal.

25. The Defence alleges that the Chamber failed to properly assess the participation and contribution of Mr Al Hassan in the commission of the crime of persecution when determining the harms and corresponding reparations award.²⁵

26. Specifically, it argues that the Chamber: (i) failed to provide sufficient reasoning as to why the award was proportional to his participation in the commission of the crime;²⁶ (ii) improperly applied the joint and several liability instead of applying proportional liability;²⁷ (iii) incorrectly assessed the harms;²⁸ and (iv) failed to apply any standard of causation;²⁹ which in turn (v) materially affected the Impugned Decision by resulting in a disproportionate amount of liability being recognised against Mr Al Hassan.³⁰

27. As a preliminary matter, Counsel recall that, as acknowledged by the Defence,³¹ the obligation to provide a reasoned decision applies equally to reparations order and that the required level of reasoning is governed by the jurisprudence of the Appeals Chamber.³² In the present case, the Chamber provided detailed reasoning with respect to each of all four factors relevant to determining the amount of liability.³³ The Impugned Decision is therefore sufficiently reasoned and enables the parties and the Appeals Chamber to understand the basis upon which the Chamber reached its conclusions.

²⁵ See the Defence Appeal Brief, *supra* note 2, paras 81-129.

²⁶ *Ibid.*, paras. 81-89.

²⁷ *Ibid.*, paras. 92-109. Counsel have grouped these three lines of arguments as they all rest on the same premise, namely the allegedly incorrect use of the joint and several liability.

²⁸ *Ibid.*, paras. 90-91 and 110-118.

²⁹ *Ibid.*, paras. 119-128.

³⁰ *Ibid.*, para. 129.

³¹ *Ibid.*, para. 82.

³² See the "Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled 'Reparations Order'" (Appeals Chamber), [No. ICC-01/04-02/06-2782 A4 A5](#), 12 September 2022, paras. 58-60 (the "*Ntaganda* Reparations Appeal Judgment").

³³ See the Impugned Decision, *supra* note 4, paras. 221-242, in particular para. 223 and all cross-references contained therein concerning the type and extent of harms recognised.

28. Turning to the Defence's substantive arguments, they rest on the premise that the mode of liability is the decisive factor in determining both the harms attributable to a convicted person and the amount of that person's liability.³⁴ That premise is incorrect. As consistently recognised in the Court's jurisprudence "*when determining the amount a convicted person is liable to pay for reparations, the primary consideration is the extent of the harm and cost it takes to repair that harm*".³⁵ The focus of the reparations determination is therefore the harm suffered by victims and the measures required to remedy that harm, rather than the particular mode of liability under which the convicted person was found responsible.

29. Nor is the Defence's contention that Mr Al Hassan's mode of liability precludes the imposition of a joint and several liability supported by the Court's case-law.³⁶ To the contrary, in the only instance in which the convicted person was found responsible exclusively under article 25(3)(d) of the Statute, namely the *Katanga* case, the Appeals Chamber held that the purpose of reparations is remedial and that the "*the focus is on the repair of the harm and not on the mode of liability*".³⁷ Significantly, the Appeals Chamber further indicated that it refrained from overturning the trial chamber's findings to ensure that Mr Katanga was liable for the totality of the harm, only because he had appealed the decision precisely with a view of reducing the amount of his liability. The Appeals Chamber considered that amending the finding to his detriment in those circumstances would have been inappropriate.³⁸ Far from supporting the Defence's position, said judgment confirms that the mode of responsibility is not determinative of the scope of the liability for reparations.

³⁴ See the Defence Appeal Brief, *supra* note 2, paras. 87-89 (interestingly however, the Defence properly refers to the jurisprudence of the Court, see paras. 85-86).

³⁵ See the "Judgement on the appeals against the order of Trial Chamber II of 24 March 2017 entitled "Order for Reparations pursuant to Article 75 of the Statute" (Appeals Chamber), [No. ICC-01/04-01/07-3778-Red A3 A4 A5](#), 9 March 2018, para. 184 (the "*Katanga* Reparations Appeal Judgment").

³⁶ See the Defence Appeal Brief, *supra* note 2, paras. 90-102.

³⁷ *Ibid.*, para. 182.

³⁸ *Ibid.*, para. 186.

30. Furthermore, the Defence posits that Mr Al Hassan's conduct should be disaggregated from that of others perpetrators to determine the harms attributable to him. Yet, the Defence offers no explanation as to how such an exercise could be carried out in practice.³⁹ Indeed, such an approach is neither feasible nor consistent with the Court's reparation framework, as it would require an artificial separation of interconnected conduct and harms and, in many cases, would have make the determination of reparations effectively impossible.

31. Likewise, the Defence's reliance on the reparations order in the *Al Mahdi* case is misplaced. Contrary to the Defence's submissions, Trial Chamber VIII did not disaggregate Mr Al Mahdi's conduct from that of other members of the common plan in order to determine the harms caused by the crimes. Rather, it identified the harms resulting from the crimes underlying the conviction and excluded harms arising from events that fell outside the scope of the charges, such as the destruction of libraries and manuscripts.⁴⁰ The Chamber adopted the same approach in the present case, taking into account only harms resulting from the crimes for which Mr Al Hassan was convicted. The Defence's analogy to the *Al Mahdi* case is therefore unavailing.

32. Furthermore, and as explained above, the Chamber committed no error in finding that the crime of persecution encompassed conduct extending beyond the acts for which Mr Al Hassan was convicted under Counts 1-5 and 14. It follows that the Chamber committed no error in its assessment of the scope and extent of the harms resulting from the crime of persecution. Accordingly, the Defence's submissions concerning the harms attributable to Mr Al Hassan⁴¹ are unfounded.

33. In any event, even assuming *arguendo* that the Appeals Chamber were to accept the Defence's position, this would have no impact on the assessment of the extent of

³⁹ *Ibid.*, para. 101.

⁴⁰ See the "Reparations Order (Trial Chamber VIII), [No. ICC-01/12-01/15-236](#), 17 August 2017, paras. 116-117 (the "*Al Mahdi* Reparations Order").

⁴¹ See the Defence Appeal Brief, *supra* note 2, paras. 110-118.

the harm. Indeed, the Defence itself accepts the existence of community harm.⁴² As recognised in the Court's jurisprudence, community harm constitutes a form of direct harm, defined as "*suffered by person as members of a group, family and or community*".⁴³ Accordingly, whether the harm suffered by the population of Timbuktu is characterised as "*community harm*" or described in different terms does not alter its nature, scope or extent. The harm remains the same, as does the need to provide reparations commensurate with that harm.

34. Turning to the Defence's arguments concerning the alleged errors in the Chamber's application of the standard of causation,⁴⁴ they are premised on a fundamental misunderstanding of the circumstances capable of breaking the chain of causation.

35. Contrary to the Defence's submissions,⁴⁵ the fact that the crimes were committed by a multitude of perpetrators pursuing a common purpose is not, in itself, relevant to determining whether Mr Al Hassan's conduct constituted a proximate cause of the harms suffered. The pertinent question is whether any intervening event broke the chain of causation between Mr Al Hassan's conduct and the resulting harm. No such intervening event has been identified. To the contrary, the harm recognised by the Chamber flowed directly from the implementation of the discriminatory rules and prohibitions underlying the campaign of persecution, in which Mr Al Hassan played a vital and important role through his functions within the Islamic Police.⁴⁶

36. Furthermore, as explicitly found by the Appeals Chamber, the fact that a trial judgment or a sentencing decision did not specifically determine that particular factual circumstances, such as the imposition of certain rules or restrictions, resulted in

⁴² *Ibid.*, para. 123.

⁴³ See the "Reparations Order" (Trial Chamber IX), [No. ICC-02/04-01/15-2074](#), 28 February 2024, para. 168 and footnote contained therein (the "*Ongwen* Reparations Order").

⁴⁴ See the Defence Appeal Brief, *supra* note 2, paras. 110-128.

⁴⁵ *Ibid.*, para. 122.

⁴⁶ See the Sentencing Decision, *supra* note 23, para. 37.

specific harm does not preclude a trial chamber from reaching such conclusions on the balance of probabilities.⁴⁷ The Defence's suggestion to the contrary is therefore inconsistent with the Court's jurisprudence.

37. In conclusion, under its second Ground of Appeal, the Defence has failed to demonstrate either that the Chamber committed any error in its determination of the convicted person's amount of liability or that its proposed alternative approaches would have resulted in a different calculation of that amount. Accordingly, this Ground of Appeal should be rejected.

3. The Defence third Ground of Appeal

38. Under its third Ground of Appeal, the Defence argues that the Chamber: (i) erred by adopting a presumption of victimhood for the inhabitants of Timbuktu for the crime of persecution;⁴⁸ (ii) failed to address the Defence's argument that the community of Timbuktu could itself qualify as a beneficiary for reparations;⁴⁹ (iii) failed to provide sufficient reasons for determining that there were 65,202 direct victims; and, thereby, (iv) materially affected the Impugned Decision by erroneously inflating Mr Al Hassan's personal financial liability.⁵⁰

39. With respect to the Defence's argument that the Chamber erred by finding that the population of Timbuktu was victims of the crime of persecution, Counsel submit the following observations.

40. First, as the Defence correctly argued, the relevant question is whether the evidentiary record could support a reasonable trier of fact in drawing the presumption

⁴⁷ See the "Judgment on the appeals against the decision of Trial Chamber II of 14 July 2023 entitled "Addendum to the Reparations Order of 8 March 2021, ICC-01/04-02/06-2659" (Appeals Chamber), [No. ICC-01/04-02/06-2908-Red A A6 A7](#), 1 November 2024, para. 415 (the *Ntaganda* Appeals Judgement on the Addendum").

⁴⁸ See the Defence Appeal Brief, *supra* note 2, paras. 130-142.

⁴⁹ *Ibid.*, paras. 143-170.

⁵⁰ *Ibid.*, paras. 170 and 189.

at stake.⁵¹ However, contrary to what the Defence appears to suggest, there is no requirement that the facts underlying such a presumption be derived exclusively from the Trial Judgment. Rather, they may also be drawn from the Sentencing Decision and any other available evidence in the record.⁵² This approach is consistent with the Appeals Chamber's jurisprudence, recalled above, according to which the absence of corresponding findings in a trial judgment or a sentencing decision does not preclude a trial chamber from reaching such conclusions for the purpose of reparations on the balance of probabilities.⁵³

41. In any event, in the Impugned Decision, the Chamber based its conclusion that member of the population of Timbuktu were targeted by the crime of persecution on religious grounds on clearly identified findings stemming from the Trial Judgment and Sentencing Decision, namely:

*"[...] while the members of the population of Timbuktu deemed by Ansar Dine/AQIM as not adhering to their rules and prohibitions were particularly affected, **the targeted group in this case goes beyond and consists of the population of Timbuktu in its entirety.** Indeed, [...] Ansar Dine/AQIM committed the underlying acts of persecution against that group as a whole, which they perceived as 'ignorant' and not 'real Muslims', targeting not only those who opposed them but also every member of the population who saw themselves forced to abide by discriminatory rules and prohibitions, which for many had a substantial impact on their individual rights and liberties [...]."*⁵⁴

⁵¹ *Ibid.*, paras. 134-135.

⁵² *Ibid.*, para. 135

⁵³ See the *Ntaganda* Appeals Judgement on the Addendum, *supra* note 47, para. 415.

⁵⁴ See the "Trial Judgment" (Trial Chamber X), with three public annexes, [No. ICC-01/12-01/18-2594-Conf](#), 26 June 2024, para. 1559, quoted in the Impugned Decision, *supra* note 4, para. 59. A public redacted version [No. ICC-01/12-01/18-2594-Red](#) was filed on the same day (the "Trial Judgment") (emphasis added).

42. It further noted that “members of Ansar Dine/AQIM, including Mr Al Hassan, imposed and promoted a set of rules and prohibitions and set up and enforced a system of repression which regulated the way of living and religious practices of the people of Timbuktu, performing daily numerous acts which severely deprived civilians of certain fundamental rights and targeted them on religious grounds”.⁵⁵

43. Having concluded that the group targeted by the crime of persecution committed by Ansar Dine/AQIM, including Mr Al Hassan, comprised the population of Timbuktu as a whole, it was not unreasonable for the Chamber to further find that “persons who can demonstrate, to the required standard of proof, that they were present or residing in the city of Timbuktu during the temporal scope of the crime of persecution committed by Mr Al Hassan, that is, from early May 2012 to 29 January 2013, are direct victims of the crime of persecution on religious grounds”.⁵⁶

44. Second, as acknowledged by the Defence itself, the crime of persecution is directed against a group or community. The individual victims of Counts 1-5 and 14 do not constitute such a community. In these circumstances, the Chamber correctly found that the various harms resulting from the crime of persecution affected the “entirety of the local population”.⁵⁷

45. Third, contrary to the Defence’s contention, this has no material impact on the reparations award. As the Chamber explained, it established a presumption of victimhood, namely that persons falling within the parameter it identified, need not establish, on an individual basis, that they are victims of the crime of persecution. The Chamber did not, however, establish any presumption of harm. It merely found that the community of Timbuktu as a whole suffered harm and, on that basis, ordered collective community-based reparations with limited individualised components. The

⁵⁵ See the Sentencing Decision, *supra* note 23, para. 69, quoted in the Impugned Decision, *supra* note 4, para. 60 (emphasis added).

⁵⁶ See the Impugned Decision, *supra* note 4, para. 63.

⁵⁷ *Ibid.*, paras. 63, 107 and 127.

same modality of reparations could have been ordered through alternative legal characterisations, including, for instance, the recognition of community harm. Accordingly, the presumption that the entire population of Timbuktu present or residing in the city during the charged period is a victim of the crime of persecution has no impact on the modality of reparations and, consequently, on the amount of Mr Al Hassan's liability. The Defence has therefore failed to demonstrate any prejudice arising from the Chamber's approach. To the contrary, the presumption was carefully circumscribed and appropriately balanced the interests of victims with the rights of the convicted person.

46. With respect to the second prong of the Defence's argument, namely its contention that the Chamber failed to engage with its proposal that the community of Timbuktu be considered a beneficiary for reparations, this argument is unfounded.⁵⁸

47. First, this contention is plainly incorrect, as the Chamber engaged at length with the notion of community harms. It expressly found that *"the evidence in the case file contains a wealth of information related to the harm caused to the community of Timbuktu as a whole, which saw its collective identity, structure and functioning impacted"*.⁵⁹ The Defence appears to misconstrue the implications of that finding by suggesting that the recognition of community harm, as opposed to other forms of harm, would necessarily result in a lower amount of liability. However, no such conclusion follows from the Chamber's reasoning. The recognition of community harm does not, in itself, dictate either the modality or the quantum of reparations, both of which must be assessed in light of the totality of the harm established and the reparative measures considered appropriate by the Chamber.

48. Second, the Chamber did not order reparations for all 65,202 residents of Timbuktu and Counsel fail to discern the basis of the Defence's argument in this

⁵⁸ See the Defence Appeal Brief, *supra* note 2, paras. 143-170.

⁵⁹ See the Impugned Decision, *supra* note 4, para. 115.

regard. Even assuming that funding constraints were irrelevant, the Impugned Decision does not require that every individual residing in Timbuktu during the relevant period receives some benefit. Nor did the Chamber make any finding to that effect. Rather, the reparations awarded are primarily collective and community-based in nature, with only limited individualised components. Accordingly, the Defence's apparent assumption that the number of presumed victims automatically translates into an equivalent number of beneficiaries finds no support in the Impugned Decision.

49. The Chamber simply alleviated a procedural evidentiary burden on individuals who suffered harm. Should they seek to benefit from certain reparations measures requiring an individual assessment, they would need to establish the harm suffered, and that they resided in Timbuktu. The sole consequence of the presumption is the recognition that persons present or residing in Timbuktu during the relevant period are victims of the crime of persecution. That recognition is, to a significant extent, symbolic in nature and reflects the Chamber's findings regarding the scope of victimisation resulting from the crime of persecution.

50. In this regard, the Defence's submissions concerning the alleged risks that this presumption would pose to victims or the community, as well as difficulties in the implementation of reparations⁶⁰ should be dismissed. The Defence is not entitled to assert rights or interests of the victims and cannot cloak arguments advanced in the interests of the convicted person as submissions made for the benefit of victims. Moreover, the Defence is not better placed than the LRVs, who has engaged with more than 2000 victims over the course of these proceedings, nor the Registry or the TFV, which has operated in Timbuktu since 2019, to assess the potential impact of the reparations framework on victims, community relations, or implementation challenges. In the absence of evidentiary support, the Defence's assertions regarding

⁶⁰ See the Defence Appeal Brief, *supra* note 2, paras. 163-168.

potential divisions within the community and implementation difficulties remain speculative and should be afforded no weight.

51. Further, the Defence's argument according to which the Chamber failed to provide sufficient reasons for its reliance on the figures of 65,202 inhabitants is entirely unpersuasive. The Chamber's reasoning comfortably exceeds the standard required by the Appeals Chamber⁶¹ when it comes to justifying the estimated number of victims. Indeed, not only did the Chamber consider all estimates before it, but it also explained in detail why it preferred the specific figure of 65,202. In particular, it addressed the divergence between the available estimates and found that the higher figure was consistent with population growth between 2009 - the date of the more conservative estimate of 54,629 - and 2012 - the relevant period for the crimes at issue. Moreover, the Chamber expressly relied on the provenance of the figure, noting that it originated from local authorities, which further supported its reliability.⁶² The Defence's contention that the Chamber inadequately addressed the divergent population figures therefore lacks merit.

52. Lastly, the Defence's argument that it was unclear whether the census relied upon by the Chamber concerned only the city of Timbuktu⁶³ is equally unconvincing. Counsel can only infer that said argument stems from a misunderstanding of the term "*commune*" which, by definition, refers to the municipal entity of Timbuktu (and not to the wider region). In any event, there was no scope for confusion in the Chamber's assessment. The figures available on the case record for the Timbuktu region are

⁶¹ See the *Ntaganda* Reparations Appeal Judgement, *supra* note 32, paras. 90, 108, and 223-224. Counsel note that the Defence correctly relies on this jurisprudence (see the Defence Appeal Brief, *supra* note 2, footnote 317).

⁶² See the Impugned Decision, *supra* note 4, para. 226, in particular sub (iii) and (iv). Thus, the Defence's line of reasoning according to which the Trial Chamber failed to adequately assess the diverging estimates is entirely unpersuasive (see the Defence Appeal Brief, *supra* note 2, paras. 177-185).

⁶³ See the Defence Appeal Brief, *supra* note 2, paras. 173-176.

significantly higher, averaging approximately 150,000 inhabitants, and are plainly inconsistent with the figure of 65,202 relied upon by the Chamber.⁶⁴

V. CONCLUSION

53. For all the foregoing reasons, Counsel submit that the Defence has failed to demonstrate that the Chamber committed any error warranting the intervention of the Appeals Chamber. The Defence's submissions in support of a substantially lower amount of the convicted person's financial liability are internally inconsistent and ultimately are nothing more than a mere disagreement with the findings in the Impugned Decision. The fact that the amount of liability is significant merely reflects the nature, scale, and extent of the harm caused by the crimes for which Mr Al Hassan was convicted.⁶⁵

54. In any event, aside from the Defence's contention that the number of inhabitants of Timbuktu during the relevant period was substantially lower than that found by the Chamber, none of the alleged errors identified by the Defence is capable of materially affecting the outcome of the Impugned Decision, and in particular the amount of Mr Al Hassan's financial liability. As demonstrated above, the Defence's challenges to the presumption of victimhood, the Chamber's treatment of community harm, and the identification of beneficiaries are devoid of any concrete impact on either the reparations modalities ordered or the amount ultimately awarded. Accordingly, even if any such argument were accepted, which is denied, it would not warrant modification of the Chamber's determination of the financial liability.

55. A comparative review of the Court's jurisprudence further confirms that the Chamber did not err in setting an high amount of liability. Notably, Mr Al Mahdi's

⁶⁴ See, for instance, the "Registry Submissions on Reparations" (Trial Chamber X), [No. ICC-01/12-01/18-2733-Conf](#), 16 June 2025, para. 6. A public redacted version [No. ICC-01/12-01/18-2789-Red](#) was filed on the same day.

⁶⁵ See the *Katanga* Reparations Appeal Judgment, *supra* note 35, para. 185.

liability was established to 2.7 million euros for the destruction of a limited number of cultural and religious monuments in Timbuktu alone.⁶⁶ That comparison is particularly instructive given that both cases concern the same geographical location.⁶⁷ At the same time, the present case involves a substantially broader range of crimes, a significantly larger number of victims, and far more extensive physical, psychological, moral, and community harms.

56. In fact, as correctly underlined by the LRVs,⁶⁸ the amount of liability set appears conservative when viewed against the scope and gravity of the crimes for which Mr Al Hassan was convicted, as well as the breadth of the harm suffered by victims and the community of Timbuktu.

⁶⁶ See the *Al Mahdi* Reparations Order, *supra* note 40, disposition.

⁶⁷ See, for instance, the “Decision on the Updated Implementation Plan from the Trust Fund for Victims” (Trial Chamber VIII), [No. ICC-01/12-01/15-324-Red](#), 4 March 2019, para. 101. See also, the Impugned Decision, *supra* note 4, para. 242.

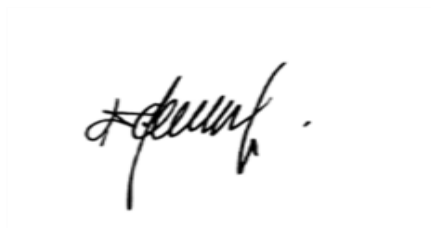
⁶⁸ See, the LRVs Appeal Brief, *supra* note 3, paras. 88-130.

VI. RELIEF SOUGHT

57. For the foregoing reasons, Counsel respectfully request the Appeals Chamber to:

- Reject all Grounds of Appeal raised by the Defence; and
- Grant the First and Second Grounds of Appeal raised by the LRVs.

58. Regarding the third Ground of Appeal raised by the LRVs, Counsel defer to the Appeals Chamber's assessment of the matter.



Dmytro Suprun



Paolina Massidda

Dated this 28th day of September 2026
At The Hague (The Netherlands)